

MINUTES
SEPTEMBER 28, 2007

Call to Order

The Board of Environmental Review's regularly scheduled meeting was called to order by Chairman Russell at 9:03a.m., on Friday September 28, 2007, in Room 111 of the Metcalf Building, 1520 East Sixth Avenue, Helena, Montana.

Attendance

Board Members Present: Chairman Joseph Russell, Heidi Kaiser, Don Marble, Larry Mires, Robin Shropshire, and Gayle Skunkcap

Board Members Absent: Bill Rossbach

Board Attorney Present: Katherine Orr, Attorney General's Office, Department of Justice

Board Secretary Present: Joyce Wittenberg

Court Reporter Present: Laurie Crutcher, Crutcher Court Reporting

Department Personnel Present: Tom Livers, Deputy Director; Kris Brewer, Director's Office; John North, Chief Legal Counsel; Jane Amdahl, Legal; Jim Madden, Legal; Claudia Massman, Legal; Norm Mullen, Legal; David Rusoff, Legal; Steve Welch, Permitting and Compliance Division (PCD); Charles Homer, PCD Air Resources Management Bureau (ARMB); Tina Engle, PCD/ARMB; Dave Klemp, PCD/ARMB; Dan Walsh, PCD/ARMB; Vicky Walsh, PCD/ARMB; Rachel Clark, PCD Public Water Supply & Subdivisions Bureau (PWSS), Jon Dilliard, PCD/PWSS; Eugene Pizzini, PCD/PWSS; Bonnie Lovelace, PCD Water Protection Bureau; Art Compton, Planning, Prevention & Assistance Bureau

Interested Persons Present (*Disclaimer: Names are spelled as best they can be read from the official sign-in sheet.*): Anne Hedges, Montana Environmental Information Center; Brenda Lindlief-Hall, Tongue River Water Users Association; Candace Payne, Southern Montana Electric Cooperative.

- I.A. Review and approve July 27, 2007, meeting minutes.
- Mr. Marble MOVED to approve the July 27, 2007, meeting minutes. Mr. Mires SECONDED the motion. The motion CARRIED with a unanimous VOTE.
- I.B. Tom Livers passed out proposed meeting dates for 2008. One correction was made: January 28, 2008 is not a Friday; the correct date would be January 25, 2008. Mr. Marble mentioned that the January/February meeting may be a two-day hearing of the SME case. March 21st was eliminated as possible date due to Kalispell's spring break. Further discussion will take place at the November 30th meeting and the 2008 dates will be set then.
- II.B.1. In the matter of the Petition for Review of Hazardous Waste Final Permit No. MTHWP-03-01 issued to Flying J Petroleum, Inc. (BER 2003-14 HW).
- Ms. Orr reported that both parties filed response briefs on September 21, 2007, and oral arguments are scheduled for October 17, 2007.
- II.A.1.a In the matter of CR Kendall Corporation's request for a hearing to appeal DEQ's decision to deny a minor permit amendment under the Metal Mine Reclamation Act, BER 2002-09 MM.
- II.A.1.b In the matter of the issuance of the Air Quality Permit for the Roundup Power Project, Permit No. 3182-00, BER 2003-04 AQ.
- II.A.1.c In the matter of Violations of the Water Quality Act by ASARCO, Inc., BER 2005-09 WQ.
- II.A.1.d In the matter of the request for hearing of Kountry Korner Enterprises, d/b/a Kountry Korner Café, regarding violations of the Montana Public Water Supply Laws, BER 2006-09 PWS.
- II.A.1.e In the matter of the appeal by Willow Creek Sewer District regarding violations of the Water Quality Act, BER 2006-13 WQ.
- II.A.1.f In the matter of the Notice of Appeal and Request for Hearing of the Citizens Awareness Network, Women's Voices for the Earth, and the Clark Fork Coalition regarding DEQ's approval of the Thompson River CO-Gen, LLC, Air Quality Permit No. 3175-04, BER 2006-18 AQ.
- II.A.1.g In the matter of violations of the Metal Mine Reclamation Act by Marty J. and Sinda M. Puryer, as individuals and d/b/a Paul Kurth Mining, for the failure to post reclamation bond, BER 2006-21 MM.
- II.A.1.h In the matter of the appeal by the City of Bozeman regarding the DEQ's final decision

- for MPDES Permit No. MT0022608, BER 2006-23 WQ.
- II.A.1.i In the matter of the appeal by the Butte-Silver Bow Public Works Department, regarding Final MPDES Permit No. MT0022012, BER 2006-27 WQ.
- II.A.1.j In the matter of violations of the Clean Air Act of Montana by Flathead County, BER 2007-01 AQ.
- II.A.1.k In the matter of the appeal by Jill and Joseph Slevin regarding Gallatin County's denial of a request for waiver to build a home, BER 2007-03 SUB.
- II.A.1.l In the matter of the request for hearing by John Pendleton regarding alleged violations of the Montana Public Water Supply Laws at the Ponderosa Mobile Home Court in Corvallis, BER 2007-04 PWS.
- II.A.1.m In the matter of the appeal by the Town of Superior, BER 2007-05 WQ, regarding final MPDES Permit No. MT0020664, issued to the Town of Superior.
- II.A.1.n In the matter of the appeals by Southern Montana Electric (SME), Citizens for Clean Energy (CCE) and Montana Environmental Information Center (MEIC) regarding Air Quality Permit No. 3423-00 issued to SME for its Highwood Generation Station, BER 2007-06 & 07 AQ.
- II.A.1.o In the matter of violations of the Water Quality Act by North Valley Hospital, Flathead County, BER 2007-08 WQ.
- II.A.1.p In the matter of violations of the Montana Public Water Supply laws by Gallatin National Forest at Soda Butte Campground, BER 2007-09 WQ.
- II.A.1.q In the matter of violations of the Montana Public Water Supply laws by Malsam Water Conditioning, Inc., d/b/a Culligan of Great Falls, Inc., at Culligan Water Conditioning Great Falls, BER 2007-10 PWS.
- II.A.1.r In the matter of violations of the Opencut Mining Act by Big Rock, LLC, at the Wheeler Gravel Pit, Missoula County, BER 2007-11 OC.
- II.A.1.s In the matter of the appeal by ExxonMobil regarding its final MPDES Permit No. MT-0028321 for its Billings Refinery, BER 2007-12 WQ.
- II.A.1.t In the matter of violations of the Open Cut Mining Act by John Schlecht, d/b/a John Schlecht Excavating, at the Schlecht Sand and Gravel Pit, Ravalli County, BER 2007-13 OC.
- II.A.1.u In the matter of violation of the Water Quality Act by Jack Mountain Estates Subdivision, Jefferson County, BER 2007-15 WQ.

- Ms. Orr had no further information beyond that provided in the agenda for items II.A.1.a through II.A.1.u.
- III.A.1 Amend ARM 17.8.501, 17.8.505, and 17.8.514 for the annual adjustment of air quality operation and open burning fees.
- Mr. Homer provided an overview of the fee changes.
- Ms. Orr stated that there was an incorrect date in the *Presiding Officer's Report*, the date on the first line should read August 1 not August 2, 2007.
- Chairman Russell called for a motion to adopt the rulemaking as amended. Ms. Kaiser so MOVED. Mr. Skunkcap SECONDED the motion. The motion CARRIED with a unanimous VOTE.
- III.A.2 Update the Air Quality Incorporation by Reference Rules at ARM 17.8.102, ARM 17.8.103, ARM 17.8.201, ARM 17.8.202, ARM 17.8.302, ARM 17.8.602, ARM 17.8.767, ARM 17.8.801, ARM 17.8.802, ARM 17.8.818, ARM 17.8.901, ARM 17.8.902, ARM 17.8.1002, ARM 17.8.1007, ARM 17.8.1102, ARM 17.8.1201, ARM 17.8.1202, ARM 17.8.1206, ARM 17.8.1212, ARM 17.8.1232, ARM 17.8.1234, ARM 17.8.1302, ARM 17.8.1402, ARM 17.8.1502, ARM 17.8.1509 (annual update and housekeeping changes).
- Mr. Homer provided an overview of the rule changes and a brief discussion took place.
- Chairman Russell called for a motion to adopt the incorporation by reference. Mr. Mires so MOVED. Ms. Shropshire SECONDED. The motion CARRIED with a unanimous VOTE.
- III.A.3 Amend ARM 17.38.101 and 106 of the public water supply rules, in accordance with MCA, 75-6-104 and 75-6-108, to allow the department to collect fees commensurate with the costs of engineering plan and specification review and to clarify existing rules.
- Mr. Pizzini provided an overview of the fee changes and a brief discussion took place.
- Chairman Russell called for a motion to adopt the rulemaking. Mr. Marble so MOVED. Mr. Skunkcap SECONDED. The motion CARRIED with a unanimous VOTE.
- III.B.1 In the matter of the violation of the Metal Mine Reclamation Act by Big Sky Masonry Stone, Inc., Wheatland County, Montana, BER 2007-16 MM.
- Mr. Mires MOVED to appoint Ms. Orr as the permanent hearing examiner for this matter. Ms. Kaiser SECONDED the motion. The motion CARRIED with a

- unanimous VOTE.
- III.B.2 In the matter of Violations of the Water Quality Act by the Montana Department of Transportation and Ascorp, Inc., D/B/A Debco Construction, at Sportsman's Campground – East, Silver Bow County, Montana, BER-2007-17 WQ.
- Mr. Marble MOVED to appoint Ms. Orr as the permanent hearing examiner for this matter. Ms. Shropshire SECONDED the motion. The motion CARRIED with a unanimous VOTE.
- III.B.3 In the matter of violations of the Opencut Mining Act by Prairie Sand and Gravel, Inc., at the state site in Roosevelt County, Montana, BER 2007-18 OC.
- Mr. Marble MOVED to appoint Ms. Orr as the permanent hearing examiner for this matter. Ms. Kaiser SECONDED the motion. The motion CARRIED with a unanimous VOTE.
- III.B.4 In the matter of violations of the Opencut Mining Act by Kenneth Mikesell at the Kenneth Mikesell site, White Sulphur Springs, Montana, BER 2007-19 OC.
- Ms. Shropshire MOVED to appoint Ms. Orr as the permanent hearing examiner for this matter. Mr. Mires SECONDED the motion. The motion CARRIED with a unanimous VOTE.
- III.C.1 In the matter of the Montana Environmental Information Center's appeal of Air Quality Permit No. 3182-01, issued for the Roundup Power Project, BER 2005-21 AQ.
- Ms. Orr provided a brief overview of the facts of the dismissal. Mr. Marble moved that the Board authorize the Chair to sign the order dismissing the case. Ms. Shropshire SECONDED the motion. The motion CARRIED with a unanimous VOTE.
- III.C.2. In the matter of violations of the Water Quality Act and the Public Water Supply Laws by Brady County Water and Sewer District, BER 2006-29 WQ.
- Ms. Orr provided a brief overview of the facts of the dismissal. Ms. Kaiser moved that the Board authorize the Chair to sign the order dismissing the case. Mr. Skunkcap SECONDED the motion. The motion CARRIED with a unanimous VOTE.
- III.C.3. In the matter of the appeal by the Missoula County Public Works Department regarding MPDES Permit No. MT0020168 and DEQ's response to public comments and submitted documents regarding the permit, BER 2007-02 WQ.
- Ms. Orr provided a brief overview of the facts of the dismissal and withdrawal of the appeal. Mr. Mires moved that the Board authorize the Chair to sign the order dismissing the case. Ms. Shropshire SECONDED the motion. The motion CARRIED

- with a unanimous VOTE.
- III.C.4 In the matter of violations of the Montana Public Water Supply Laws by Broadway Flying J, Belgrade, BER 2007-14 PWS.
- Ms. Orr provided a brief overview of the facts of the dismissal. Ms. Kaiser moved that the Board authorize the Chair to sign the order dismissing the case. Ms. Shropshire SECONDED the motion. The motion CARRIED with a unanimous VOTE.
- IV.A.1 Public Comment
- Brenda Lindlief-Hall, representing the Tongue River Water Users Association, addressed the board regarding the discussions between the Environmental Protection Agency (EPA) and the States of Montana and Wyoming regarding Montana's 2003 Water Quality Standards and its 2006 nondegradation rule, both relating to coal bed methane. Ms. Lindlief-Hall stated that any draft agreements should be more widely vetted, particularly among interested parties such as the Tongue River Water Users Association.
- Art Compton presented background information from the Department's perspective, describing the main discussion points and their potential interaction with Board standards and rules. Mr. Compton also clarified that in these discussions EPA is the arbiter of water quality issues between the two states.
- Mr. Compton then answered several questions from Board members regarding the issues discussions and potential impact on Board standards and rules.
- IV.A.2 Mr. Skunkcap requested an update on Zortman-Landusky at the November meeting.
- V. Adjournment
- Chairman Russell called for a motion to adjourn. Ms. Kaiser so MOVED. Mr. Mires SECONDED the motion. The motion CARRIED with a unanimous VOTE.
- The meeting adjourned at 10:19 a.m.

Board of Environmental Review September 28, 2007, minutes approved:

JOSEPH W. RUSSELL, M.P.H.
CHAIRMAN
BOARD OF ENVIRONMENTAL REVIEW

DATE